
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARLON ALONZO SMITH,

Defendant.

**MEMORANDUM DECISION AND
ORDER DISMISSING WITHOUT
PREJUDICE MOTION FOR RELIEF
FROM JUDGMENT**

Case No. 2:16-cr-00020-DN

District Judge David Nuffer

Defendant Marlon Alonzo Smith seeks relief from his conviction and sentence under [FED. R. CIV. P. 60\(b\)\(4\)](#) and [60\(b\)\(6\)](#) (“Motion”).¹ Defendant argues that his conviction and sentence are void and must be vacated because of due process violations and prosecutorial misconduct.² Defendant specifically argues that the government:

- failed to disclose and withheld material and exculpatory evidence from the defense;³ and
- elicited false and misleading testimony and improperly vouched for witnesses’ credibility at trial.⁴

Because Defendant’s Motion is considered a second-or-successive motion under [28 U.S.C. § 2255](#), and Defendant did not first obtain authorization from the Tenth Circuit Court of Appeals for the Motion’s filing, subject matter jurisdiction is lacking. Therefore, Defendant’s Motion⁵ is DISMISSED without prejudice. A certificate of appealability is also DENIED.

¹ Amended Motion for Relief from Judgment Pursuant to Federal Rules of Civil Procedure Rule 60(b)(4) and Rule 60(b)(6) (“Motion”), [docket no. 297](#), filed Dec. 20, 2024.

² *Id.* at 10-15.

³ *Id.* at 10-11, 14-15.

⁴ *Id.* at 11-13.

⁵ [Docket no. 297](#), filed Dec. 20, 2024.

DISCUSSION

“A prisoner must obtain [the Tenth Circuit Court of Appeal]’s authorization to file a second-or-successive § 2255 motion.”⁶ “A prisoner’s post-judgment motion is treated like a second-or-successive § 2255 motion—and is therefore subject to the authorization requirements of § 2255(h)—if it asserts or reasserts claims of error in the prisoner’s conviction.”⁷ And “[i]f the prisoner’s [motion] must be treated as a second or successive § 2255 motion, the district court does not even have jurisdiction to deny the relief sought in the [motion]” absent the Tenth Circuit’s prior authorization of the motion’s filing.⁸

Defendant previously filed a § 2255 motion,⁹ which was denied and dismissed with prejudice.¹⁰ Defendant was denied a certificate of appealability regarding his § 2255 motion.¹¹ Defendant also previously filed a motion seeking relief from his conviction and sentence under [FED. R. CIV. P. 60\(d\)\(3\)](#) and the Supreme Court’s opinion in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*¹² (“*Hazel-Atlas Motion*”).¹³ Defendant’s *Hazel-Atlas Motion* was dismissed without prejudice as an improper second-or-successive § 2255 motion filed without

⁶ *United States v. Baker*, 718 F.3d 1204, 1206 (10th Cir. 2013) (citing 28 U.S.C. §§ 2255(h), 2244(b)(3)).

⁷ *Id.* (citing *United States v. Nelson*, 465 F.3d 1145, 1147 (10th Cir. 2006)).

⁸ *Id.* (internal quotations and punctuation omitted).

⁹ Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, [docket no. 1](#) in *Smith v. United States*, 2:21-cv-00081-DN (D. Utah) (“§ 2255 Case”), filed Feb. 8, 2021; [Amended] Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, [docket no. 17](#) in § 2255 Case, filed May 3, 2021.

¹⁰ Amended Memorandum Decision and Order Denying Smith’s Amended 28 U.S.C. § 2255 Motion at 20, [docket no. 26](#) in § 2255 Case, filed Oct. 5, 2021.

¹¹ *Id.*; Order Denying Certificate of Appealability, 10th Cir. No. 21-4130, [docket no. 32](#) in § 2255 Case, filed Jan. 31, 2023.

¹² [322 U.S. 238 \(1944\)](#).

¹³ Petitioner’s Motion for Relief Under *Hazel-Atlas* (“*Hazel-Atlas Motion*”), [docket no. 273](#), filed Apr. 29, 2024.

prior authorization from the Tenth Circuit.¹⁴ And Defendant was denied a certificate of appealability regarding his *Hazel-Atlas* Motion.¹⁵ Now, raising similar arguments to those rejected in his § 2255 motion and previously raised in his *Hazel-Atlas* Motion, Defendant's Motion seeks relief from his conviction and sentence under [FED. R. CIV. P. 60\(b\)\(4\)](#) and [60\(b\)\(6\)](#).¹⁶

“[\[FED. R. CIV. P.\] 60\(b\)](#) sets forth ground upon which a party may move the district court to grant relief from a final judgment.”¹⁷ However, in the context of a criminal case, “[t]he fact that a [defendant] labeled [a] motion as brought under [Rule 60] does not change the analysis [courts] use to determine if [the motion] is an unauthorized second-or-successive § 2255 motion.”¹⁸ “It is the relief sought, not the [motion]’s title, that determines whether the [motion] is a § 2255 motion.”¹⁹

“[A Rule] 60(b) motion is a second or successive [§ 2255] petition if it in substance or effect asserts or reasserts a federal basis for relief from the [defendant’s] underlying conviction.”²⁰

Some examples of Rule 60(b) motions that should be treated as second or successive habeas petitions because they assert or reassert a federal basis for relief from the underlying conviction include: a motion seeking to present a claim of constitutional error omitted from the movant’s initial habeas petition; a motion

¹⁴ Memorandum Decision and Order Dismissing Without Prejudice Motion for Relief Under *Hazel-Atlas*, [docket no. 278](#), filed May 23, 2024.

¹⁵ Memorandum Decision and Order Denying Certificate of Appealability, docket no. 285, filed June 7, 2024. The Tenth Circuit also refused to grant authorization for Defendant’s filing of his *Hazel-Atlas* Motion because it “ha[d] no authority to prescreen Rule 60 motions to decide if they are true Rule 60 motions.” Order at 2, 10th Cir. No. 24-4056, [docket no. 283](#), filed June 5, 2024. Defendant ultimately voluntarily dismissed his appeal of the *Hazel-Atlas* Motion’s dismissal. Order, 10th Cir. No. 24-4066, [docket no. 291](#), filed June 20, 2024.

¹⁶ Motion at 10-15.

¹⁷ *Baker*, 718 F.3d at 1206.

¹⁸ *Id.* at 1207.

¹⁹ *Id.* (internal quotations omitted).

²⁰ *Spitznas v. Boone*, 464 F.3d 1213, 1215 (10th Cir. 2006).

seeking leave to present “newly discovered evidence” in order to advance the merits of a claim previously denied; or a motion “seeking vindication of” a habeas claim by challenging the habeas court’s previous ruling on the merits of that claim.²¹

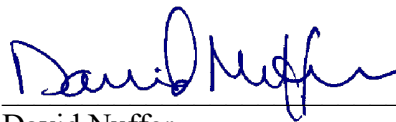
Defendant’s Motion is not a “true” Rule 60(b) motion. The Motion raises only challenges to the propriety and validity of his underlying conviction and sentence.²² Therefore, the Motion is considered a second-or-successive § 2255 motion. And as a second-or successive § 2255 motion, the Motion cannot be filed without prior authorization from the Tenth Circuit.²³ Because Defendant did not first obtain authorization from the Tenth Circuit for a second-or-successive § 2255 motion, subject matter jurisdiction over the Motion is lacking.²⁴ The Motion is DISMISSED without prejudice, and Defendant is DENIED a certificate of appealability.

ORDER

IT IS HEREBY ORDERED that Defendant’s Motion²⁵ is DISMISSED without prejudice for lack of subject matter jurisdiction. Defendant is DENIED a certificate of appealability.

Signed January 8, 2025.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge

²¹ *Id.* at 1216 (internal citations and punctuation omitted).

²² Motion at 10-15.

²³ 28 U.S.C. § 2255(h); *Baker*, 718 F.3d at 1206.

²⁴ *Baker*, 718 F.3d at 1206.

²⁵ Docket no. 297, filed Dec. 20, 2024.